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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1524 of 2001

New Delhi, this the 6th day of July, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri R.N. Gautam
S/o Late Shri M.G. Gautam
Head TTE,
Central Railway,
Agra Cantt.

-APPLICANT

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through:

1. The General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Central Railway,
Jhansi.
3. The Station Superintendent,
Central Railway,
Agra Cantt.

-RESPONDENTS

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

This is an application filed under Section 19 of the Administrative Tribunal's Act, 1985, whereby the applicant has prayed for quashing of transfer order which has been passed vide the impugned order No.Chief Ticket Inspector/Agra Cantt./Transfer/4/2001 dated 30.5.2001.

2. Facts, as alleged by the applicant, in brief are, that the applicant was working as Head TTE at Agra Cantt. of Central Railway under Jhansi Division. He alleges that he had filed an OA No.634/92 challenging the order when he along with another
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colleague had been wrongfully ignored for promotion to the post of Head TTE. The OA was allowed on 13.8.93 but the respondents preferred an SLP before the Hon'ble Supreme Court which was dismissed on 18.3.99 but in the meantime on account of certain domestic circumstances, the applicant had put up an application for mutual transfer with Shri Mukesh Sham Sunder Chaturvedi, TC Tundla for his transfer from Jhansi Division to Mumbai Division and vice-versa.

3. The applicant further alleges that respondents did not pass any order till 13.4.2001 when suddenly the Chief Ticket Inspector, Central Railway, Agra Cantt. informed the applicant that his application for mutual transfer has been accepted and he should immediately proceed to Mumbai Division vice Shri Mukesh Shyam Sunder Chaturvedi. On receipt of this order, the applicant made an application to the Divisional Railway Manager, Senior Divisional Commercial Manager as well as to the Station Superintendent informing them that due to the changed circumstances he is not inclined to go to Mumbai on mutual exchange and he wrote the said letter on 2.6.2001 (Annexure A-4).

4. The applicant further alleges that though the OA of the applicant had been allowed on 13.8.93 against which the SLP of the respondents had been dismissed but the respondents have not implemented the order and since they have been summoned in a contempt petition and in order to see that the applicant is

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unable to prosecute his contempt petition, this order of transfer has been passed and thus they want to prevent the applicant from pursuing the contempt petition. So the sole ground taken by the applicant is that the order of transfer is a mala fide one because the applicant had filed contempt petition in the Supreme Court and the Hon'ble Supreme Court had directed the General Manager, Divisional Railway Manager and Senior Divisional Personnel Officer to appear in person before the court on 9.7.2001 for flouting the orders of the Hon'ble Supreme Court so in order to prevent him, they have passed the orders of transfer but so far they have not passed the order of promotion as per the directions of the Tribunal and as confirmed by the Hon'ble Supreme Court and as such the order of transfer is passed with a mala fide intention and hence the same is justiciable and liable to be quashed.

5. When the OA was filed on hearing the applicant this Court had passed an order and directed that the operation of the impugned order should be stayed and notice was issued to the respondents.

6. In reply, the respondents submitted that the applicant had made an application on 10.3.98 requesting for mutual exchange transfer with SHri Mukesh Chaturvedi to Mumbai Division. His request was acceded to and necessary orders were issued by the Headquarters Office, Mumbai Division on 22.3.99 vide Anneuxre R-2. Vide Annexure R-3 the applicant had himself admitted that since his request for mutual

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exchange had been acceded to, he may be spared for being transferred to Mumbai Division. An Office Order dated 24.4.2001 has been issued accordingly so it is pleaded that the applicant has not come to the Tribunal with clean hands so he is not entitled to the relief nor entitled for stay.

7. Besides that it is pleaded that after the order of transfer was passed and the applicant was ordered to be relieved, the applicant has made a representation in the office on 4.6.2001 for his transfer to Mumbai but without awaiting decision thereon, i.e., without exhausting the departmental remedies, the applicant has rushed to this Tribunal and has filed the present OA, so on that score also the OA is not maintainable.

8. I have heard the learned counsel for the parties and have gone through the records of the case.

9. Though the respondents have filed a short reply seeking vacation of the interim order dated 8.6.2001 passed by this Tribunal, but on hearing I find that the OA itself can be disposed of, so I proceeded to hear the OA on merits.

10. Shri B.S. Mainee appearing for the applicant submitted that since on the application of the applicant for mutual transfer which had been filed in the year 1998, no order has been passed till the impugned order of relieving was issued, so there is much change in the circumstances and the department



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should not have passed the order and this order has been passed with a mala fide intention since on the Contempt Petition of the applicant the Hon'ble Supreme Court has summoned the senior officers of the Railway Department and those officers have to appear before the Hon'ble Supreme Court on 9.7.2001 and the respondents are now out to see that the applicant should be transferred so that he is prevented from pursuing his contempt petition.

11. The counsel for the applicant has also submitted that by passing this order of transfer respondents want to deprive the applicant the benefits of the judgment passed on the OA of the applicant and confirmed by the Hon'ble Supreme Court and thus his career would also suffer because the applicant will not be able to get the benefit of the judgments after such a long litigation if he is transferred to Mumbai Division.

12. Shri Dhawan appearing for the respondents opposed the contentions of the applicant and submitted that it is the applicant who himself had made an application for mutual exchange transfer in the year 1998 and again vide letter dated 15.3.2000 the applicant himself had submitted that since the orders of transfer has been passed on his application so he should be relieved. Thus the counsel for the respondents submitted that the process of transfer of the applicant has been initiated on the application filed by the applicant in the year 1998 and now since the transfer has materialised and transfer order has been issued in pursuance of the application made by the applicant, so the applicant cannot turn back and

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say now that he does not want transfer and wants to remain in the division where he is posted.

13. The counsel for the respondents also submitted that though the request of transfer had been accepted on 12.3.99 but according to the order itself which is at R-2 it was Shri Mukesh Shyam Sunder Chaturvedi who was to move first and after his joining at Jhansi Division the applicant was to be relieved and now the applicant is being relieved in terms of the order passed by the Railways on the application so the transfer order cannot be said to be a mala fide one.

14. In my view the contention raised by the applicant with regard to the mala fide do not appear to have any merits because the process of transfer of the applicant to Mumbai Division had been initiated on the application submitted by the applicant and Shri Mukesh Shyam Sunder Chaturvedi vide Annexure R-I which appears to be a joint application and its title itself suggest that it is mutual exchange transfer and the transfer order was passed (Annexure R-2) as long back as on 12.3.99 with the condition that Shri Mukesh Shyam Chaturvedi was to proceed first from Mumbai Division and vide letter R-3 the applicant himself had again requested on 15.3.2000 that since transfer order has been passed so he should be transferred immediately. Thus, in no way it can be said to be a mala fide transfer which was made in order to deprive the applicant any benefit of the judgment passed in his favour either by the CAT or as confirmed by the Hon'ble Supreme Court, nor it can be said that this transfer order has been passed in order to prevent the

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applicant from pursuing his contempt petition. For this purpose I may mention that the dates on which various events have taken place are quite important and relevant to spell out the mala fide or bona fide of the department. According to the applicant himself he had filed the OA in the year 1992 and the OA was decided by the Tribunal on 13.8.1993 so whatever rights had been determined in favour of the applicant vide judgment that was clear to the mind of the applicant on 13.8.93 itself but still the applicant filed an application for transfer on 10.5.98 though the order of CAT could not be implemented because the department had gone in SLP but the SLP was decided by the Hon'ble Supreme Court on 18.3.99. However, in the meanwhile on 12.3.99 the transfer order had been passed and even after the passing of the order by the Tribunal and as confirmed by the Hon'ble Supreme Court the applicant did not withdraw his application for mutual exchange transfer, rather he sent another letter dated 15.3.2000 asking the department to implement the order of transfer immediately and when he had written this letter, the decision of the Hon'ble Supreme Court had already been passed and the applicant had become well aware of his rights as given to him vide the judgment of the Tribunal and as confirmed by the Hon'ble Supreme Court, so now he cannot raise any grievance that his transfer order has been passed in order to deprive him the benefits of the judgment because even after the judgment the applicant had been insisting for his transfer to Mumbai.

15. As far as preventing the applicant from

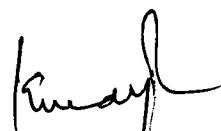


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pursuing the contempt petition is concerned, I may mention that the matter of Contempt of Court is always between a contemnor and the court and it is for the court itself to see that the orders passed by the court are implemented by all concerned. So there is no question of preventing the applicant from pursuing his contempt petition. I may also mention that when the applicant had filed an OA, he did not mention in his OA that even vide letter dated 15.3.2000 he had asked for implementation of the transfer order. Thus the applicant who was keen till 15.3.2000 wanted to see that he is transferred to Mumbai, cannot be allowed to turn his face now and say that he is no more interested particularly keeping in view the fact that he has not asked for withdrawal of his application till the impugned order was passed.

16. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.

17. The interim order passed on 8.6.2001 is hereby vacated.


(KULDIP SINGH)
MEMBER(JUDL)

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